
THE

Opinions of the Learned about the
Celebrated Maxim in the Laws of
England,

The King can do no Wrong.

²
To my Kingman, Mr
Roffe, Ex dono Author

Jo: Brydall A



Opinions of the Learned about the
Celebrated Maxim in the Laws of
England

The King can do no Wrong.

Ἀξιῶμαι Βασιλεὺς.

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THE
Unanimous, or Consentient Opinion
OF THE
LEARNED:

NAMELY,

*Digges, Heath, Croke, Glanvill, Lord
Digby, Elliot, Lords and Commons in Par-
liament, Jenkins, Bates, Bridgeman, Earl of
Clarendon, and others,*

IN THE

Explication or Exposition of that Celebrated
Maxim in the Laws of *England,*

The King can do no Wrong :

In a Letter from a Lawyer in the Countrey to
a Student at one of the Inns of Courts.

The ROYAL MARTYR.

— *Certainly his Majesty is not the first, and I hope
will not be the last King of England, that hath not
held him self accountable to any Earthly Power. An-
swer to the Reasons for the Votes of no Address.*

LONDON, Printed for John Senex over-
against S. Clement's Church in the Strand, 1703.

OF THE
J. E. A. R. N. E. D.



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THE
Unanimous, or Consentient Opinion
OF THE
LEARNED, &c.

SIR,

I Am very much pleased to hear by your nearest Relations, that you prove at the Inns of Court a great Proficient in the Knowledge of our Municipal Laws : And I do return you many thanks for the Honour you have done me in your free communicating to my self some of the Fruits of your Reading ; more particularly, of such as concern the Maxims or Principles of our Common Law : And among those Maxims, you have been pleased to mention one, namely, The King of England can do no Wrong. The true genuine Sense and Meaning whereof, you would gladly understand : And to that end, your earnest desire is, That I should return you by the Post, or by some other Conveyance, my Sentiments touching that Prerogative Maxim. You tell me indeed, you have often met with it in your Books : As in Co. Litt. 19. b. his 2d. Institutes, 681. And in his Reports, Lib. 1. Altonwood's Case, Lib. 5. 55. b. Knight's Case, Lib. 11. 72. Magdalen-College Case. Davy's Reports, 75. b. Le Case de Commenda ; Br. Patent, 101. and Plowden's Commentaries, Lord Berkely's Case. In compliance to your Desire (which, where there is Friendship, has the Weight of a Command ;) I have made a diligent Enquiry or Search into the Arguments, Speeches and Writings both of Lawyers, and also of other Learned persons that have been subsequent to the times

B

wherein

The Opinion of the Learned about the Maxim

wherein Brooke, Plowden, Coke and Davies did live, how this Axiom of yours has been by them interpreted, or expounded; what kind of Comment, Gloss, or Elucidation they had put on it: And I have upon this my search, clearly found, That as to the Sacred Person of our English Monarch, he being Supreme Governour of the Realm, is not punishable by any Humane Coercive Power; nor bound to render any Account but to God alone, of any of his Regal Actions: But in case the King shall be by the Subtilty of his publick Ministers at any time circumvented, or surprized, and seduced to enjoin things contrary to Law; and that the same be executed accordingly, these Injunctions or Mandates will be null and void; and both the Authors and Actors in such Abuses, must stand obnoxious or liable to the Punishment that the Establish'd Laws of the Realm have provided for them. And now, for the Proof of what I have upon Enquiry met withal, I shall present to your View the Names of the pre-mentioned Modern Lawyers, and other Learned Persons; together with the very Expressions, Word for Word, which each of them have uttered in the Explication or Exposition of this Royal Maxim, The King can do no Wrong. And the first that I shall vouch by Name, shall be Sir Dudley Diggs.

I Sir

I. Sir Dudley Diggs.

—FOR our most Gracious Sovereign that ^{1625.} lives, whose Name hath been used, ^{His Pro-} and may perhaps now be, for the Duke's ^{logue to} Justification; the Commons know well, that among ^{the Im-} his Majesty's most Royal Virtues, his Piety unto ^{peachment} his Father, hath made him a pious Nourisher of ^{against the} his Affections ever to this Lord Duke; on whom, ^{D. of Buc-} out of that Consideration, his Majesty hath wrought kingham. a kind of Wonder-making Favour hereditary. But the Abuse thereof must be the Lord Duke's own. And if there have been any Commands, such as were, or may be pretended, his Mis-informations have procured them: whereas the Laws of *England* teach us, That Kings cannot command Ill, or Unlawful things, whenever they speak, though by their Letters-Patents or their Seals. If the thing be evil, these Letters-Patents be void, and whatsoever ill Event succeeds, the Executioners of such Commands must ever answer for them.

II. Heath

II. Heath, Attorney-General.

1627.
His Arg.
upon the
Habeas
Corpus
concerning
Laws.

THE Common Law, which hath long flourish-
ed, under the Government of our King, and
his Progenitors, Kings of this Realm, has had that
reverend Respect to its Sovereign, as that it hath
concluded, *The King can do no Wrong*. And as it is
the Lord Berkley's Case in Plowden's Comment. 246. b.
it is part of the King's Prerogative, *That he can do no
Wrong*. In 4. E. 4. 25. The King cannot be a Dissei-
sor: And so it is also in the Lord Berkley's Case, in
32. H. 8. Dyer, f. 8. The King cannot usurp upon a
Patron: For the Common Law hath that reverend
Respect to him, that it cannot conceive he will do
any Injury.

III. Judge CROKE.

1638.
His Arg.
in Hamb-
den's Case
touching
Ship-Money.

MAny times untrue Suggestions are made in
Writs, and Patents; and yet it doth not lie
upon the King's Conscience: Neither doth the Law
impute any Fault to the King, if any such be; for
the Law doth always conceive honourably of the
King, that he cannot, nor will not signifie an Un-
truth under his Great Seal; but is abus'd therein, and
the Law imputeth it to them that so mis-informed
the King, and thrust in such Suggestions into the
Writ: And therefore all Patents grounded upon un-
true Suggestions, are accounted void, pag. 52.
Whatsoever is done to the Hurt, or Wrong of the
Sub-

in Law, The King can do no Wrong.

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Subjects against the Laws of the Land, the Law imputeth that Honour and Justice to the King (whose Throne is established by Justice) that it is not done by the King, but it is done by some untrue, and unjust Information; and therefore void, and not done by Prerogative, —*pag. 59.*

Wrong is not to be imputed to the King; for he can do no Wrong; but it is imputed unto them who advised him to this Course, —*pag. 62.*

IV. *Sergeant Glanville.*

Kings, as they are Kings, are never said to err; only the best may be abused by Mis-information. The highest Point of Prerogative is, *The King can do no Wrong.* If therefore, by the Subtilty of Mis-informers, by the specious false Pretences of Publick Good, by Cunning, and close Contrivance of their Ways to seduce, the Sacred Royal Person shall at any time be circumvented, or surprized, or over-wrought, and drawn to command things contrary to the Law, and that the same be done accordingly, these Commands will be all void and the King innocent, even in his very Person, being defended by his Prerogative: Nevertheless, the Authors in such Mis-informations, and Actors in those Abuses, will stand liable, and exposed to strict Examination and just Censure, as having nothing to defend themselves, but the Colour of a void Command, made void by just Prerogative, and by the Fundamental, and true Reason of State and Monarchy: And what difference is there, or can be in Law, between a void Command, and no command at all?

1640.
*His Speech
to the King
when cho-
sen Speaker
of the House
of Commons*

C

V. *The*

V. *The Lord Digby.*

1640.
*His Speech
concerning
Grievances*

IT hath been often said in this House, and I think can never be too often repeated, *That the King of England can do no Wrong*: But, tho' they could, yet Princes have no part in the Ill of those Actions which their Judges assure them to be just; their Counsellours, that they are prudent; and their Divines, that they are conscientious.

VI. *Sir John Elliot.*

1641.
*His Speech
touching
Matters of
Religion.*

WE have not the least Jealousie in the King, we have that Comfort in his Piety and Goodness; as, if there be any Misprision, or Error, I hope it is by those Ministers about him, which not only he, but all Princes are subject unto. And to clear that Princes are subject to Mis-informations, many Actions may be entituled to their own Names, when there is no suspicion of it to be done by themselves. But give me leave to look back to Precedents of other times; and what I find in other Stories, may be useful in these.

Antiochus of Asia sent Letters unto his Provinces, if they received any Dispatches in his Name not agreeable to Justice, *Ignoto se literas esse scriptas, ideoque non parerent*. I find by *Plutarch* of the

the great King *Antiochus* of *Asia*, who saith, 'That
'Princes are obnoxious to Abuses of Ministers, and
'it could not at all times be prevented; therefore he
'sent Messengers, that Letters or Dispatches sent in
'his Name, that were not warrantable by Law, and
'agreeable to Justice, should not be conceived to be
'done by him; and therefore they could not give
'way unto it.

I find another Book. *Gratian* did not only note,
and confess the same, but added the Reason also,
which the Masters of the Civil Law can also testify
from their Books, wherein it is thus expressed; *V. Cad. 10.*
'Because that oftentimes with Importunity of Mini- *12. 1.*
'sters and those about them, Princes are drawn to Decret.
'grant things not fit to be granted. As it was in Greg. 1. 5.
that, so it may be in this: I speak to this end, to Tit. 34.
draw this Conclusion, That if there be any thing C. 12.
that carries the Title of His Majesty, it may be
the Fault of his Ministers: Far be it from me to
have any Suspicion of him.



VII. Lords and Commons in Parliament.

1642.
19. Maii.
Remon-
strance of
Lords and
Commons.

— **W**Hereas his Majesty says, he could wish that his own immediate Actions, which he avows on his own Honour, might not be so roughly censured under that common Stile of Evil Counsellours; we could also heartily wish, that we had not Cause to make that Stile so common: But how often, and undutiful soever these wicked Counsellours fix their Dishonour upon the King, by making his Majesty the Author of those Evil Actions, which are the Effects of their own Evil Counsels; We, his Majesty's Loyal and Dutiful Subjects, can use no other Stile, according to that Maxim in the Law, *The King can do no Wrong*: But if any Ill be committed in matter of State, the Council; if in matters of Justice, the Judges must answer for it.

VIII. Lords

VIII. Lords and Commons in Parliament.

— AND is it not also a Court ? And doth not that Court call to an Account all other Courts of Justice, and all Officers and Ministers under his Majesty, even for such things as they shall do against the Law, though by his Majesty's express Command ? And what is this, but to take an Accompt of the Discharge of his Majesty's Trusts ? The Law exempts his Majesty from Accompt in no other sense than it exempts him from Fault ; because he is to do publick Affairs of the Kingdom by his Officers and Ministers of State, and not by himself ; and they are to give an Account of that which the King doth by them. In which respect Sir *William Thorpe* Chief-Justice in *Edward* the Third's time, was charged for breaking the King's Oath as much as in him lay.

1642.
Nov. 2d.
Remon-
strance of
the Lords
and Com-
mons.

IX. *Mr. Dudley Diggs of All-Souls,
Oxon, Son of Sir Dudley Diggs
Master of the Rolls.*

164—
His Tract
entituled,
The Un-
lawful-
ness of
Subjects
taking up
Arms a-
gainst
their So-
vereign in
what Case
soever.

THE Fathers unanimous Gloss upon *David's* Confession, *Against thee, thee only, have I sinned*, Psal. 52. 4. pleads for this Impunity, notwithstanding he had abused *Uriah's* Wife, and contrived the Death of so gallant a Man, who forgot what was dearest to him next unto the King's Honour, and would not go in unto his Wife until the King's Enemies were destroyed: Yet he saith, in the Height of his Humility, he had sinned against God only; because there was no Tribunal amongst Men to which he was responsible. Our Common Law seems to express it self in the same sense, *Le Roy ne fa tort; The King can do no Wrong*: Though we may suffer undeservedly; yet no sense of Injuries received, can dispense with the Obligation of not righting ourselves by force.

X. Judge

X. Judge Jenkins.

THE King cannot be said to do an Injury. ^{164. —}
The Reason is, because nothing can be done ^{His Tract,}
in this Realm, either by the Grant of the King, or ^{entituled,}
by any other Act of his, against the Persons of his ^{Lex Terræ}
Subjects, their Goods, Lands and Liberties, than according to the Established Laws, which the Judges have sworn to observe and execute, between the King and his People, equally between Rich and Poor, Great and Small: And therefore the Judges, and Ministers of Justice, are to be impeached and punished, if the Laws be violated and broken: And no Reflection is to be made on the King himself.

XI. Doctor

XI. Dr. Bates a Physician.

1649.
Elenchus
Motuum
nuper in
Anglia,
p. 9.

VOX ista non ab adulatione Legis, sed ab æquitate summâ profecta est, Rex nunquam potest errare, aut cuiquam injuriam facere. Siquidem in Administros, & Consiliarios (quorum est admonere Principem, vel iniqua imperanti detractare operam, aut ad postremum officio renunciare, potius quam contra Leges quicquam jubenti parere) tum culpa omnis, tum pœna derivari & solet, & debet; It was not Flattery, but the greatest Justice, that gave ground to that noted Maxim, *That the King cannot Err, nor do any Wrong*; because the whole Blame, and all the Punishment being wont (and indeed ought) to fall upon the publick Ministers and Counsellours, whose Duty is to admonish the Prince, and to deny their Concurrence with him in any thing that is unjust; and to resign their Place, rather than obey him, when the King commands any thing contrary to Law.

XII. Cl.

XII. Cl. Salmasius.

INDE est illud vulgare apud Anglos in eorum legibus, Regem non posse facere injuriam. Injuria id omne est quod non jure fit, & quod jure vindicatur in eo qui commisit. Cum verò Regi liceat facere, & quidem impune quod libet; ideo non est injuria quam facit, quia non in eo punitur, sicut in alio plecteretur. Criminibus adulterii, Homicidii & aliis Capitalibus non tenetur Rex, quia legibus solutus est, quibus ejusmodi Criminibus rei conveniuntur. Rex igitur tanquam privatus non potest propter ullum Crimen lege postulari, quia non discedit ab eo Majestas, sive dignitas regalis. Ideo in Lege Anglicanâ dicitur, Regem esse Vicarium, & non posse ullum malum facere, ut habet Jenkinsius Judex in principatu Walliæ, in libro cui titulum fecit, Lex terræ. In Magistratibus, qui à Rege, vel à populo cujus dominatio est, creantur, aliter se Res habet; quia potestatem suam amittere possunt, vel ea excidere ob Criminis causam: Idcirco persona eorum distingui potest à potestate. Majestatis quippe rei fieri possunt quod non cadit in Regem, quia ipsa Majestas est. Cum igitur qui in Magistratu est, adulterium committit, aut homicidium, tanquam civis & privatus, stupri causam dicet, & cædis, non tanquam Magistratus. Si verò dum Magistratus est aliquid fecerit contra dignitatem potestatis quam gerit, tum Majestatis læsæ reus fit. Si contra leges faciat, si judicia vendat, si authoritate publica utatur aliter quam debet, si de capite innocentis pactus sit; tunc tanquam Magistratus peccat, & lædit Majestatem, vel Regis, qui eum creavit, vel Reipublicæ.

1652.
Defensio
regia pro
Carolo
primo,
p. 320.

The Opinion of the Learned about the Maxim

In tali itaque homine qui Magistratus est, persona distinguere potest a potestate, quia interdum peccet tanquam Civis, interdum tanquam Magistratus, qui potestate sua abutitur. Sed in Rege hæc divisio Personæ & Majestatis recipi non potest, quia non potest delinquere, tanquam privatus, cum in ordinem redigi non queat privatorum.

XIII. Sir Orlando Bridgman, Lord Chief-Baron.

1660.
His Speech
to the
Grand-
Jury upon
the Ar-
raignment
of the Re-
gicides.

THE King can do no Wrong: It is a Rule of Law; it is frequent in our Law-Books. If he can do no wrong, he cannot be punish'd for any Wrong. The King, he hath the Infirmities and Weakness of a Man: but he cannot do an Injury; at least, not considerable in Person: He must do it by his Ministers, Agents, Instruments. Now the Law, though it provide for the King; yet if any of his Ministers do Wrong, though by his Command, they are punishable. The King cannot arrest a Man, as he cannot be arrested himself. But if he arrest me by another Man, I have remedy against this Man, tho' not against the King.

XIV.

XIV. *Doctor* Stillingfleet.

P*lacitum Regis* must never stand against ^{1663.}
Placita Coronæ. Those things which depend ^{His Orig.}
upon the Fundamental and Establish'd Laws, hold ^{Sacr.}
good against any positive Sentence, or Declaration ^{Lib. 2.}
of a Prince's Will : Because he is supposed to ^{c. 5. sect. 6.}
have bound up himself by the Establish'd Laws; ^{pag. 172.}
And therefore any thing else, which comes from
him contrary to them, is supposed not to be the
Will of the Prince, but of the Persons perswading
him to it.

XV.

XV. *The Earl of Clarendon.*

1676.
His Lord-
ships Survey
of the Le-
viathan,
c. 27. p.
135, and
136.

Kings themselves can never be punished, or reprehended publickly (that being a Reproach not consistent with the Reverence due to Majesty) for their Casual or Wilful Errors, and Mistakes, let the ill Consequence of them be what they will: But if they, who maliciously lead, or advise, or obey them in unjust Resolutions and Commands, were to have the same Indempnity, there must be a Dissolution of all Kingdoms and Governments. But as Kings must be left to God, whose Vicegerents they are, to judge of their Breach of Trust; so they, who offend against the Law, must be left to the Punishment the Law hath provided for them.

XVI. *Sir Philip Warwicke.*

1678.
His Dis-
course of
Govern-
ment, p. 54.

THE Wisdom of our Government makes it an Axiom, *The King can do no Injury*: Therefore no Provocation justifies Force against him. His Ministers are answerable to the Laws; he is exempt; and all this for the Subjects Peace.

XVII. W. P. Esq;

THE King can do no Wrong; therefore cannot be a Disseisor. He is all Justice. *Veritas & Justitia circa solitum ejus*: They are the two Supporters that do hold up his Crown. He is *Medicus Regni, Pater Patriæ, Sponsus qui per annulum* is espoused to his Realm at his Coronation: He is God's Lieutenant, and is not able to do an unjust thing, 4. E. 4. 25. *Potentia injuriæ est impotentia Naturæ*. His Ministers may offend; and therefore to be punished, if the Laws be violated; but not he.

1679.
His Paper
of the
Divine
Right of
Kings, &c.

XVIII. And last to be named, is Mr. Edmond Hickerlingill, Rector of the Rectory of All-Saints in Colchester.

THE King himself is accountable for his Errors to none but God, his personal Errors; but as King, and in his politick Capacity, it is impossible he should have any Errors: For the King of England can do no Wrong. Why? because he cannot speak, but in the Voice of the Law: And if any Injunction come out contrary to Law, both they that obey, and they that promote, shall be punished by the King, by the King's Law.

1685.
His Sermon
on Judges
5. 23.
pag. 7. in-
tituled,
Curse ye
Meroz.

F

THUS

THUS have I presented to you a full View of the very Words and Expressions of the pre-mentioned Learned Persons, from the Year 1625. to the Year 1680; whereby you may clearly perceive how the Common-Law Maxim, *The King cannot Err, nor do any Wrong*, hath been for the Years by-past, interpreted or expounded, both by the eminent Sages of the Law, and other very Learned Men; all of them unanimously consenting in this Proposition; namely, that although there are Laws to guide and direct our Sovereign Princes; yet, if they chance to forget themselves so much as to violate and break through them, there are none by which their Subjects might resist and punish them: Their Counsellours, Ministers, Agents and Instruments, were ever accountable; but as to themselves, it was always a Maxim, *That the Monarchs of England, Kings or Queens, could do no Wrong.*

The Close of all, Sir, shall be this; namely, Let all the People of *England* with one Consent, make this humble Address to her Most Excellent Majesty Queen *Anne*, *ANNÆ Augustæ, à Deo Coronatæ, Magnæ, & Pacificæ Imperatrici Anglorum, vita diuturna, & Æterna Majestas.*

FINIS.

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